

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: POLYURETHANE FOAM)	
ANTITRUST LITIGATION)	MDL Docket No. 2196
<hr/>		
THIS DOCUMENT APPLIES TO:)	Index No. 10-MD-2196 (JZ)
)	
ALL INDIRECT PURCHASER)	Hon. Jack Zouhary
ACTIONS)	
)	

NOTICE OF FILING

Please take notice that Indirect Purchaser Plaintiffs herewith file the attached letter to Judge Zouhary.

Dated: January 22, 2014

Respectfully submitted,

/s/ Marvin A. Miller

Marvin A. Miller

Matthew E. Van Tine

Andrew Szot

Lori A. Fanning

MILLER LAW LLC

115 S. LaSalle Street, Suite 2910

Chicago, IL 60603

Tele: (312) 332-3400

Fax: (312) 676-2676

Email: MMiller@MillerLawLLC.com

MVantine@MillerLawLLC.com

ASzot@MillerLawLLC.com

LFanning@MillerLawLLC.com

Interim Lead Counsel for Indirect Purchasers

Richard M. Kerger (0015864)

Kimberly Conklin (0074726)

KERGER & HARTMAN, LLC

33 S. Michigan Street, Suite 100

Toledo, OH 43604

Telephone: (419) 255-5990

Fax: (419) 255-5997

Email: Rkerger@kergerlaw.com

Kconklin@kergerlaw.com

Executive Committee for Indirect Purchasers

Shpetim Ademi
Guri Ademi
David Syrios
ADEMI & O'REILLY, LLP
3620 East Layton Avenue
Cudahy, Wisconsin 53110
(414) 482-8000
Email: SAdemi@ademilaw.com
GAdemi@ademilaw.com
DSyrios@ademilaw.com

Jay B. Shapiro
Samuel O. Patmore
Abigail E. Corbett
Matthew Dates
**STEARNS WEAVER MILLER WEISSLER ALHADEFF
& SITTERSON, P.A.**
150 West Flagler Street
Miami, Florida 33130
(305) 789-3200
Email: JShapiro@stearnsweaver.com
SPalmore@stearnsweaver.com
ACorbett@stearnsweaver.com
MDates@stearnsweaver.com

Martin D. Holmes
M. Reid Estes
DICKINSON WRIGHT PLLC
424 Church Street
Suite 1401
Nashville, TN 37219
(615) 244-6538
Email: MDHolmes@dickinsonwright.com
MREstes@dickinsonwright.com

Daniel Lynch
Avidan J. Stern
LYNCH & STERN LLP
150 South Wacker Drive
Suite 2600
Chicago, IL 60606
(312) 346-1600
Email: Dan@lynchandstern.com
Avi@lynchandstern.com

Eric D. Barton
WAGSTAFF CARTMELL
4740 Grand Avenue, Suite 300
Kansas City, MO 64112
(816) 701-1100
Email: EBarton@wagstaffcartmell.com

David Schiller
SCHILLER & SCHILLER, PLLC
Professional Park at Pleasant Valley
5540 Munford Road • Suite 101
Raleigh, North Carolina 27612
Telephone: (919) 789-4677
Email: DSchiller@yahoo.com

Susan Bernstein
Attorney at Law
200 Highland Avenue, Suite 306
Needham, MA 02494
Telephone: (781) 290-5858
Email: Susan@sabernlaw.com

Counsel for Indirect Purchaser Plaintiffs



115 South LaSalle Street Suite 2910 Chicago, Illinois 60603

Tel: 312.332.3400 Telecopier: 312.676.2676

Marvin A. Miller
mmiller@millerlawllc.com
(also admitted in New York)

January 21, 2014

Judge Jack Zouhary
United States District Judge
Northern District of Ohio
Toledo, OH

Re: MDL Docket No. 2196
In re Polyurethane Foam Antitrust Litigation
(Indirect Purchaser Actions)

Dear Judge Zouhary,

I write in response to the email sent to you earlier today by Wesley Mullen, one of the counsel for Vitafoam. Vitafoam's citation to *Gariety v. Grant Thornton, LLP*, 368 F.3d 356 (4th Cir. 2004), has nothing to do with ACPERA and only holds that if a plaintiff in a securities class action alleges that common questions will predominate under Rule 23(b)(3) through the use of the fraud-on-the-market theory to establish reliance, the court should satisfy itself that the plaintiff has a basis for those allegations. In contrast, Vitafoam seeks a preliminary determination that its ACPERA partial defense to damages will be successful. There is no basis in ACPERA or the case law for this unnecessary preliminary determination. As discussed at the class certification hearing, *LCD* held that "the Court's assessment of an applicant's [ACPERA] cooperation occurs at the time of imposing judgment." *TFT-LCD (Flat Panel) Antitrust Litig.*, 618 F. Supp. 2d 1194, 1196 (N.D. Cal. 2009). In light of the Court's extensive discussion with Mr. Coleman and Dr. Lamb at the class certification hearing regarding methodologies for calculating damages as to Vitafoam, *Gariety* does not address that issue and does not have any relevance to questions 16 and 18 which the Court posed in advance of the hearing.

Respectfully submitted,

s/Marvin A. Miller

Marvin A. Miller

CERTIFICATE OF SERVICE

I, Marvin A. Miller, certify that on January 22, 2014, I caused to be served the foregoing document in accordance with Paragraph 9 of the Initial Case Management Order entered January 20, 2011.

/s/Marvin A. Miller